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Contact: Jamal Ware
(202) 225-4121

Hoekstra Releases Republican Views on FY'09 Intelligence Authorization

WASHINGTON, D.C. – *U.S. Rep. Pete Hoekstra, R-Mich., the top Republican on the House Permanent Select Committee on Intelligence, today released the following Republican views on the Intelligence Authorization Act for Fiscal Year 2009.*

Republican Views

H.R. 5959

Intelligence Authorization Act for Fiscal Year 2009

The annual Intelligence Authorization Act is one of the most important bills that the House passes each year. It provides and allocates resources to critical national security programs that are the front lines of America's defense and foreign policies and, most critically, work to detect, prevent, and disrupt potential terrorist attacks on the American people. The bill also is essential to ensure close and effective congressional oversight of the intelligence community.

Although we have concerns with issues that we believe must continue to be addressed and resolved as the legislative process continues, we are encouraged that this bill avoids many of the contentious items that have recently prevented the enactment of an intelligence authorization bill and that it reflects areas of bipartisan consensus on critical national security issues. We also believe that the bill was significantly improved by seven Republican amendments that were adopted on a bipartisan basis to address important issues facing the intelligence community.

Our views follow with respect to a number of important issues. We are pleased that many of them have been addressed in the bill, and disappointed that others remain unresolved. We look forward to continuing the Committee's efforts to move a bipartisan, consensus bill to enactment.

Foreign Intelligence Surveillance Act Modernization

This bill is still missing the most significant and most critically needed consensus legislation on intelligence currently pending before Congress – the bipartisan compromise legislation to modernize the Foreign Intelligence Surveillance Act that passed the Senate by a vote of 68-29 and is supported by

a majority of the House. With the expiration of the Protect America Act on February 17, 2008, the Intelligence Community lost critical authorities to react with speed and agility to potential terrorist threats around the world. The problem will soon be even further compounded when authority under existing certifications expires.

It is irresponsible for the Democratic leadership of the House to continue to abuse its power to block vital national security legislation that the Senate passed on an overwhelming bipartisan basis, that a majority of the House has indicated that it will support on a bipartisan basis, and that the President has indicated that he will sign. Congresswoman Heather Wilson offered an amendment to include this vitally needed legislation in the bill. The amendment received bipartisan support but was not adopted by a vote of 10-11.

The remarks of two Democratic members of the Committee during the markup recognizing the importance of FISA modernization to our national security and the urgency of completing action only reinforce the consensus that this issue must be dealt with immediately. We will continue to work with our colleagues on a bipartisan basis to enact the compromise legislation passed by the Senate at the earliest opportunity.

Earmarks

Last year, the House adopted a motion by Ranking Republican Pete Hoekstra to instruct House conferees on the Fiscal Year 2008 Intelligence Authorization to remove all earmarks from the bill by a bipartisan vote of 249-160. Those instructions were nonetheless disregarded by House conferees. This year, the Committee – by a bipartisan vote of 17-4 - adopted an amendment by Congressman Hoekstra to remove all earmarks, including an earmark in the bill text for the National Drug Intelligence Center.

As a number of incidents have illustrated in previous years up to last year, our intelligence programs should be based on only one primary consideration – what best ensures that the intelligence community is able to do its job in the interest of the national security of the United States. Our priority should be those programs that the members of this Committee have collectively taken a careful look at, debated, and determined where money should be spent with input from the intelligence community – not member projects which all too often can be directed to parochial interests or wasteful spending rather than the national interest.

The Committee's bipartisan vote to remove earmarks from this year's bill is an unprecedented step that we hope will set an example for this Committee as well as other legislation moving forward.

National Security Act Amendments

It is likely that there is no single current issue on which there is a stronger bipartisan consensus than our shared deep concern that the Administration is not fulfilling its statutory duty to keep each member of the Committee fully and currently informed with respect to certain intelligence matters. In the past year alone, Chairman Reyes and Ranking Member Hoekstra jointly called on the President to brief the Members of the Committee with respect to intelligence regarding the al Kibar facility in Syria, which was subsequently disclosed to the public on the same afternoon that Committee members were finally briefed, several months later. With respect to another matter, the Administration refuses to brief all

Members of the Committee even though it has briefed five members of the Committee staff. This follows other incidents in which no member of the Committee was briefed in a timely fashion, if at all, with respect to critical and sensitive matters within the scope of the statutory duty to report. It is clear that reforms are necessary.

Section 502 of the bill makes amendments to certain congressional notification procedures of the National Security Act of 1947. It is the product of bipartisan discussion and agreement between Chairman Reyes and Ranking Member Hoekstra and includes language suggested by both. The provision expressly provides that information briefed to the Committee reporting on activities other than covert actions shall be made available to each member of the Committee, unless the President requests in writing that access to the information be limited and details extraordinary circumstances justifying the request. In the event of such a request to limit access, the Chairman and Ranking Member of the Committee may jointly determine whether and how to limit access to the material within the Committee. Absent such an agreement, access to the information or material will be limited.

In our view, this provision does two critical things. First, it sets forth a statutory presumption that information briefed to the Committee should be made available to each member of the Committee rather than restricted to the Chairman and Ranking Member. Second, it provides a mechanism to permit exceptions when legitimate extraordinary circumstances arise impacting national security. We believe that this provision reflects a better balance than the current practice. It respects the Constitutional duty of the President to protect national security information by providing a mechanism to request that access to the information be limited. It also respects the Constitutional authority of the House to organize itself and to determine how to share information within the Committee. Ultimately, these interests are balanced and resolved by requiring a clear bipartisan consensus to override any request by the President to limit access to information.

We are concerned that the new enhanced reporting requirements provided for in paragraph (a) of Section 502 of the bill are too prescriptive and burdensome and may not be practically workable. We hope that these provisions can be perfected as the bill moves forward in the legislative process. On the whole, however, this provision is a significant step forward to strengthen congressional oversight of intelligence activities in a manner consistent with the Constitution.

Additionally, the Committee adopted by a bipartisan vote of 17-4 an amendment by Congressman John McHugh clarifying that the statutory duty to “fully and currently” inform the intelligence committees with respect to intelligence information relating to North Korea or China is not fulfilled if a Committee is briefed after the information has been communicated to the governments of those countries. We are extremely disappointed that this clarification is necessary.

It should be emphasized that this amendment is not intended to apply outside the scope of notifications understood to be required under Section 501 of the National Security Act of 1947, and is not intended to preclude communicating information to the Governments of North Korea or China in emergency or exigent circumstances.

National Security Space Systems

We are disappointed with certain provisions of the classified annex with respect to national security space systems. National security space systems have been and will continue to be a cornerstone of the nation's intelligence collection capability. However, the current bill lacks a sense of urgency with regard to making decisions on overhead architecture and fails to address critical architectural shortfalls. It does not adequately fund critical national security space systems and is overly prescriptive in certain areas mandating technical solutions without complete analysis. Despite these shortcomings, however, we believe the bill authorizes a minimally acceptable level of funding for these systems.

Federal Bureau of Investigation Matters

The Intelligence Community continues to move forward with a number of reform initiatives in the wake of the September 11, 2001 terrorist attacks on the United States. Perhaps none of these initiatives is more important than the transformation of the intelligence elements of the Federal Bureau of Investigation from a culture of law enforcement and prosecution to one directed at detecting and preventing potential terrorist attacks in the United States. While the FBI has a number of initiatives in place underway with respect to its intelligence components, we remain significantly concerned at the Bureau's failure to communicate a high-level strategic vision for its transformation, and that the process simply isn't moving fast enough to implement fundamental change. In addition, the Committee remains concerned – without determining responsibility – with respect to specific instances where the working relationship between the Bureau, other elements of the intelligence community, and state and local governments has been strained. At the same time, however, the Committee's oversight efforts have repeatedly suggested that the FBI is the most appropriate federal agency to lead domestic counterterrorism and counterintelligence matters, and that the Bureau should be given time to make its reforms work before more radical alternatives are considered.

The Committee adopted by voice vote an amendment by Congressman Mike Rogers to require the Director of the FBI to submit a report to the congressional intelligence committees describing his long term, strategic, vision for transforming the intelligence capabilities of the Bureau and the progress of the internal reforms intended to achieve that vision. It is important to stress that this report is intended to be a high-level strategic report in which the Director describes the fundamental principles underlying his view of the transformation, the desired FBI capabilities and doctrinal approach at the end of the transformation, and the way to get there. The Committee has already received numerous reports and briefings detailing specific organizational changes and initiatives, but none have satisfactorily communicated a comprehensive, cohesive strategic vision for the overall transformation.

In addition, the Committee adopted, by a unanimous vote of 21-0, an amendment by Congressman Rogers to prohibit any funds authorized in the bill from being used to implement the mandatory reassignment of a supervisor of the Bureau after five years of service in a management position, commonly known as the "five and out" policy. We believe that this policy has hampered optimum counterterrorism capability, just as similar mandatory reassignment and rotation policies have adversely impacted other elements of the Intelligence Community. A substantial portion of FBI funding is authorized in this bill. We believe this personnel policy is counterproductive and unwise and do not support authorizing funds to further implement it.

Size of the Office of Director of National Intelligence

The Committee shares a bipartisan consensus that the Office of the Director of National Intelligence, just three years old, has already grown in size and scope well beyond the intentions of the Intelligence Reform and Terrorism Prevention Act that created it. By voice vote, the Committee adopted an amendment to the classified Schedule of Authorizations by Congressman Mike Rogers to stop further growth and limit the size of the ODNI. In particular, we are dismayed at efforts by the ODNI to justify further growth by attempting to omit personnel from the National Counterterrorism Center from its personnel count, despite the express statutory provision that the NCTC is part of the ODNI.

The Committee on a bipartisan basis had made clear that it views the ODNI as a coordinator, not a doer of functions. Our effort is about making ODNI an effective coordinator, not another layer of bureaucracy that stifles the speed, agility and creativity necessary in today's intelligence environment. During the Committee's oversight efforts, intelligence community personnel have indicated that they are spending increasing amounts of time responding to taskings and requests from the ODNI bureaucracy with little apparent benefit. Rather than attempt to rationalize further bureaucratic growth, we hope that the ODNI will carefully revisit how to accomplish its core coordinating goals within the authorized personnel strength.

Unauthorized Disclosures of Classified Information

As we have emphasized repeatedly in the past, the problem of unauthorized disclosure remains a grave one. Such disclosures harm national security, place American citizens and intelligence community personnel at increased risk, and inevitably result in substantial consequences to the United States – both tangible and intangible. We are disappointed that the Committee has held no hearings and conducted little to no substantial oversight on this issue during this Congress. In addition, we are concerned that the issue is becoming increasingly politicized, sometimes under the false premise that there are “good leaks” and “bad leaks”. The Committee should take a firm and clear position that no unauthorized disclosures of classified information should be tolerated.

Oversight efforts during the previous Congress clearly established that prosecution under current laws relating to unauthorized disclosure has not been an effective deterrent tool. The Committee adopted by voice vote an amendment offered by Congressman Mac Thornberry that requires the DNI to review whether current law or administrative authorities enable the revocation of pensions of intelligence community personnel who commit unauthorized disclosures of classified information. This provision is identical to one included by the House in the Fiscal Year 2007 Intelligence Authorization Act. We hope that it will be enacted and that the DNI will carefully review this matter and other options in an effort to provide a more effective deterrent to unauthorized disclosures of classified information.

Inspector General of the Intelligence Community

We have significant concerns with Section 408 of the bill, which would create a new Inspector General of the Intelligence Community. While we do not oppose either enhanced oversight of the Intelligence Community or a capability to review cross-cutting issues within the Intelligence Community, we are concerned that this provision – which is almost a quarter of the entire bill – duplicates efforts of

Department and Agency inspectors general, is unnecessarily complex and unwieldy, and threatens to further grow the size and bureaucracy of the Office of the Director of National Intelligence. Committee Republicans offered an amendment to strike this provision, which failed by a voice vote. We hope to work with our colleagues toward a more limited and rational resolution of this issue.

Jihadists

Over the last few months, the National Counterterrorism Center, the State Department, and the Department of Homeland Security issued memos instructing their employees to not use several terms related to Islam and radical Jihadism, including “jihadist,” “jihad,” “Mujahadeen,” “caliphate,” “Islamist,” “Islamofascist,” and “Wahhabi.” These memos also recommend using the term “mainstream Muslims” instead of “moderate Muslims.” This new policy reportedly reflected advice from unnamed American Muslim leaders on avoiding rhetoric that could offend Muslim audiences or bolster the cause of radical Jihadist groups like al Qaeda.

During Committee consideration of the bill, Ranking Member Hoekstra offered an amendment to prohibit the use of any funds authorized by the bill from being used to prohibit or discourage the use of those terms. The amendment should not have been controversial, yet it was defeated by a party-line vote. We do not believe that free speech should be controversial, nor should candid, accurate, and fair discussion of the self-professed nature and goals of enemies who have attacked the United States, sworn to kill more Americans, and regularly seek to violently stifle the slightest criticism of their activities and intentions. It is more than ironic that some who have complained about alleged politicization of the Intelligence Community opposed this amendment, which simply would have ensured free speech and open, objective analysis, and it is unfortunate that they refuse to acknowledge the nature of the threats posed by our enemies.

It is important to emphasize that we do not support any form of religious discrimination, bigotry, or hatred, or U.S. officials making statements that insult Muslims or any other religious or ethnic group. However, this new “speech code” is in line with other efforts by U.S. Muslim leaders sympathetic to radical Jihadist groups like Hamas and Hezbollah to stifle open debate about radical Islam by banning important terms that describe their efforts. For example, since Hizballah, Hamas, and al Qaeda routinely describe their terrorist activities as a “Jihad” against the West, one cannot sensibly discuss their activities without using this word. Similarly, Osama bin Laden claims his terrorist efforts are intended to recreate a “caliphate,” in an area stretching from Morocco to Indonesia that was under Muslim rule in medieval times. It is impossible to have an honest discussion of bin Laden’s philosophy without using the word caliphate.

We hope that common sense and free speech will prevail with respect to this issue, and will continue to pursue solutions through close and continuing oversight efforts.

National Intelligence Estimate on Iran

Recent revelations with respect to the al Kibar facility in Syria have suggested the need for close and careful reassessment of previous intelligence and assessments with respect to other nations. Ranking Member Hoekstra offered an amendment to require a revised and updated National Intelligence Estimate with regard to the Iranian nuclear program, which would have specifically required a

reassessment of prior estimates in light of the experience with al Kibar, as well as a review of how that incident affects the confidence level of the Director of National Intelligence in current assessments of the Iran nuclear program. The amendment failed by voice vote.

We continue to believe, however, that the November 2007 National Intelligence Estimate on Iran was so poorly drafted and so seriously undermined by subsequent developments and intelligence – especially the Syrian nuclear facility – that it is necessary for the DNI to go back to the drawing board and start over. We will continue to monitor this issue closely and seek the necessary review and reassessment through the oversight process.

Diversion of Intelligence Community Resources to Study Global Climate Change

The Committee adopted by voice vote a Republican amendment making clear the sense of Congress that resources should not be diverted from human intelligence collection and other intelligence programs designed to combat al Qaeda in order to study global climate change. Despite the existence of numerous more appropriate government programs and initiatives to study this issue, pressure to use intelligence resources in inappropriate and nonproductive ways relative to global climate change continues. This provision makes clear that intelligence resources should not be diverted from al Qaeda for this purpose.

Limitation on Interrogation Techniques

The Committee defeated – by a bipartisan vote of 9-12 – an amendment that would have limited all elements of the intelligence community to the interrogation techniques authorized by the United States Army Field Manual on Human Intelligence Collector Operations. We think it is important to highlight this vote by the Committee. Despite vigorous debate and comment by other Members of Congress and the public at large (often based on inaccurate information or supposition) we want to reiterate our strong view that the congressional intelligence committees continue to be in the best position to review this issue.

The Committee's bipartisan vote emphasizes some critical points. First, the United States does not torture, and the intelligence community conducts itself in accordance with the law, including the treaty obligations of the United States. The Committee has been briefed on the interrogation techniques currently being used by the Intelligence Community, and has conducted intensive oversight of both the underlying policy and its application. Second, it is critical not to provide al Qaeda or other potential adversaries with an enumeration and explanation of those techniques. To do so would severely undermine the capabilities of the Intelligence Community to collect information, sometimes in critical circumstances, and accordingly the security of the United States.

While we fully recognize the importance of the underlying issues, we believe the better solution for the substantially more limited programs of the intelligence community is continued close and careful oversight, as provided for in the amendment adopted by the Committee on a bipartisan basis to prohibit the use of contractors in interrogations by the intelligence community, and several provisions of the classified annex to the bill.